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No. 95-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

BONNIE C. SABIA, et al.,

Petitioners,

vs.

SEMINOLE COUNTY, FLORIDA, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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October 11, 1995

63 pp

QUESTIONS PRESENTED FOR REVIEW

The questions presented by this petition are:

1. In evaluating claims by juvenile pretrial detainees that the actions of the individual defendants constituted deliberate indifference in violation of the detainee's Fourteenth Amendment rights as a pretrial detainee, does the Eighth Amendment deliberate indifference standard apply, or a more protective standard based either on the Due Process Clause or the Fourth Amendment?

2. Given that the Eighth Amendment protects convicted prisoners from only that degree of punishment that can be characterized as cruel and unusual, should the Eighth Amendment deliberate indifference standard apply without modification to jail suicide cases, involving accused juvenile citizens detained pending trial who are

entitled to a presumption of innocence and who, unlike convicted prisoners, may not be punished?

3. In regard to the estate of a pretrial detainee in a jail suicide case occurring in a county jail, is a claim of municipal liability limited to the sheriff administering the jail, or is the county properly named as well?

4. In evaluating claims by juvenile pretrial detainees that the acitons of the individual defendants and county jail constituted deliberate indifference in violation of the detainees Fourteenth Amendment rights as a pretrial detainee, can Appellate Courts substitute their findings of fact for disputed facts of record to form a basis for affirming the granting of a Motion for Summary Judgment?

CERTIFICATE OF INTERESTED PERSONS

1. Richard Blount - Defendant/Respondent
2. Kevin J. Cardin, Esquire
3. Margaret Carrow - Plaintiff/Petitioner
4. Donald Eslinger - Defendant/Respondent
5. Matthew P.Farmer, Esquire
6. Douglas Fauls - Defendant/Respondent
7. Rodney G. Gregory, Esquire
8. Matthew GIll - Defendant/Respondent
9. Julius F. Parker, Jr., Esquire
10. Bonnie Sabia - Plaintiff/Petitioner
11. Seminole County - Defendant/Respondent

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No. 95-_____

IN THE
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BONNIE C. SABIA,

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vs.

SEMINOLE COUNTY, FLORIDA, et al.,

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**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

The petitioner, Bonnie C. Sabia, respectfully prays that a Writ of Certiorari issue to review the opinion and judgement of the United States Court of Appeals for the Eleventh Circuit entered in this action on July 14, 1995.

OPINIONS AND ORDERS BELOW

The unreported opinion of the United States Court of Appeals for the Eleventh Circuit in BONNIE C. SABIA et al. v. SEMINOLE COUNTY, FLORIDA, et al., Case No. 94-2850, is reproduced in Appendix A, infra, and the unreported opinion of the United States District Court, Middle District of Florida, Orlando Division is reproduced in Appendix B, infra.

JURISDICTION

The jurisdiction of this Court to review the judgement of the United States Court of Appeals for the Eleventh Circuit by writ of certiorari is invoked under 28 U.S.C. Section 1254(1). On July 14, 1995 the Court of Appeals affirmed the judgement of the district court. This petition is thus timely filed within ninety days of that date as required by 28 U.S.C. Section

2101(c); Sup.Ct.R. 12, 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment provides, in pertinent part, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amendment VIII.

Finally, according to 42 U.S.C. Section 1983,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or

other proper proceedings for redress ...

STATEMENT OF THE CASE

A. Course of Proceedings in the Court Below.

This action commenced with the filing of the Complaint and Demand for Jury Trial on November 7, 1990. The corrected Amended Complaint and Demand for Jury Trial was filed on September 24, 1991. Defendant, Seminole County, filed its Answer and affirmative Defenses on October 1, 1991.

Defendant, Seminole County, filed a Motion for Summary Judgement with Memorandum in Support on March 31, 1992. The Motion for Summary Judgement was denied by an order dated July 29, 1992. On August 3, 1992, Co-Defendants, Blount, Polk, Lemen, Fauls and McGill, filed a Notice of Appeal relative to the July 29, 1992 Order which, in part, denied their Motion for Summary Judgement

based on the defense of qualified immunity. Defendant, Seminole County, filed its Notice of Appeal based upon the doctrine of pendant jurisdiction.

The 11th Circuit Court declined to exercise pendant jurisdiction as to Defendant, Seminole County, but reversed the trial court in an unpublished opinion dated December 20, 1993, and the case was remanded to the trial court. Defendant, Seminole County, filed a Renewed Motion for Summary Judgement on April 19, 1994. The Motion for Summary Judgement was set for hearing by Order dated May 16, 1994, and the hearing was held on June 1, 1994.

By Order dated June 7, 1994, the trial court, by Senior Judge George C. Young, granted the motions of all remaining Defendants for Summary Judgement and entered Judgement in favor of all Defendants on the

merits, substituting the findings of fact of the Appellate Court for the disputed facts of record to form a basis for affirming a defense Motion for Summary Judgement. Plaintiffs filed their Notice of Appeal on July 7, 1994. The Eleventh Circuit issued its per curium affirmance of the lower Court's ruling on July 14, 1995.

B. STATEMENT OF THE FACTS

On or about July 14, 1987, Edwin P. Bateman ("Bateman"), the deceased, was placed in the Seminole County Jail after his arrest on charges of armed robbery and murder. Bateman was a juvenile and, according to State law, he was subject to fifteen minute visual observations pursuant to chapter 33-8 of the Florida Administrative code.

Following his arrest, Bateman subsequently came into contact with Kaufman and

Bass-Paul, two mental health professionals. A contract betewen the Seminole Community Mental Health Center ("the Center" and the Seminole County Jail ("the jail") provided that either Kaufman or Bass-Paul would provide ten to twelve hours ewekly of mental health care to inmates at the jail.

Bateman met separately with both Kaufman and Bass-Paul on several occasions. During these sessions, he expressed depression about his incarceration. Bateman was placed on suicide watch by a guard on July 30, 1987, but Kaufman returned him to the general pop- ulation shortly thereafter. A few weeks later, at approximately 2:00 a.m. on August 27, 1987, Bateman committed suicide by hanging.

A genuine issue of material fact exists on the central issue of whether the "Sheriff's Officer defendants" were

deliberately indifferent to Mr. Bateman's serious psychological needs.

On the critical element of notice, deposition testimony and expert opinion reflect that these defendants were on notice of the threat of suicide on the night of Mr. Bateman's death. Moreover, the record reflects a genuine dispute over the matter of fifteen minute checks, according to the district court the most important single factual issue in the case. Further, the record reflects, again in deposition testimony, that the Sheriff's Office defendants failed to enter the cell block area to make the requisite fifteen minute checks, remaining instead in the central control room. These defendants were terminated (but later reinstated) for their failure to make the required checks from the cell block area itself.

In summary, the Sheriff's Office defendants were admittedly on notice of the threat of suicide, and a factual dispute remained on the issue of noncompliance with the mandatory rule requiring direct fifteen minute checks precluding a summary judgement in this case.

C. HOW THE FEDERAL QUESTION WAS PRESENTED

The jurisdiction of the District Court was invoked under 28 U.S.C. Section 1331 and 1343.

REASONS FOR GRANTING THE WRIT

Certiorari is warranted under Sup.Ct.R. 10.1(a) because a division exists amoung the United States Courts of Appeals on the issue of whether constitutional claims of jail suicide by pre- trial detainees are governed not by an Eighth Amendment deliberate indifference standard but by a more protective standard originating in either the Fourth

Amendment or in the Due Process Clause of the Fourteenth Amendment.

Moreover, on two separate occasions this Court has explicitly deferred to another day the question of the appropriate standard. Thus, certiorari is also warranted under Sup.Ct.R. 10.1(c). In City of Revere v. Massachusetts General Hospital, 463 U.S. 239 (1983), the Court expressly refused to decide whether the pretrial detainees are afforded greater protection under the Fourteenth Amendment that convicted prisoners are extended by the Eighth Amendment. Id at 243 (acknowledging only that the rights of a pretrial detainee to medical care, treatment, or monitoring are "at least as great" as the rights afforded to a convicted prisoner by the Eighth Amendment). This Court once again expressly reserved decision on this issue in City of

Canton v. Harris, 489 U.S. 378 (1989), observing that,

> [T]his Court has never determined what degree of culpability must be shown before the particular constitutional deprivation asserted in this case - a denial of the due process right to medical care while in detention - is established. Indeed in[Revere], we reserved deicsion on the question whether something less than the Eighth Amendment's deliberate indifference test may be applicable in claims by detainees asserting violation of their due process right to medical care while in custody.

Id. at 388, n. 8.

THE COURT SHOULD GRANT CERTIORARI BECAUSE THE CIRCUITS ARE DIVIDED ON THE CONSTITUTIONAL STANDARD APPLICABLE TO AN IMPORTANT AREA OF CONSTITUTIONAL ADJUDICATION AND BECAUSE THE COURT HAS TWICE EXPRESSLY DEFERRED RESOLVING THE ISSUE.

Certiorari is warranted in this case by virtue of a division amoung the United States Courts of Appeals on the issue of apporpriate constitutional standard applicable to claims by pretrial detainees

of inadequate medical care and the appropriate treatment and monitoring. On two separate occasions, moreover, the Court has explicitly deferred resolving the issue raised by petitioner. This matter provides an ideal opportunity, then, to resolve the question left open by the Court in both City of Revere v. Massachusetts General Hospital, 463 U.S. 239 (1983), and again in City of Canton v. Harris, 489 U.S. 378 (1989).

In addition, certiorari is warranted on the grounds that the Court, in Albright v. oliver, __ U.S. __, 114 S.Ct. 807 (1994), recently modified, albeit in a different context, the constitutional standard defining governmental obligations toward accused citizens in the post-arrest, yet pre-conviction, stage of their criminal proceedings.

The Eleventh Circuit Court of Appeals has held that the same deliberate indifference standard applicable to assessing claims by convicted prisoners applies as well to Fourteenth Amendments claims of inadequate medical care made by pretrial detainees. See Hamm v. Dekalb County, 774 F.2d 1567, 1574 (11th Cir. 1985); Belcher v. City of Foley, 30 F3d. 1390, 1396 (11th Cir. 1994). Petitioner submits that the issue of adequacy of medical care extends with the same import to the issue of official deliberate indifference resulting in a jail suicide occuring while criminal charges are pending.

Most of the remaining circuits addressing the issue agree with the Eleventh Circuit. The Third Circuit, Kost v. Kozakiewicz, 1 F.3d 176, 188 (3rd Cir. (1993), the Sixth Circuit, Heflin v. Stewart

County, 958 F.2d 709, 714 (6th Cir.), cert. denied. __ U.S. __, 113 S.Ct. 598 (1992), and the Seventh Circuit, Salazar v. City of Chicago, 940 F.2d 233, 240 (7th Cir. 1991), all conflate the Eighth and Fourteenth Amendment standards, as does the Eighth Circuit. See Ervin v. Busby, 992 F.2d 147, 150 (8th Cir.), cert. denied, __ U.S. __, 114 S.Ct. 220, 126 L.Ed.2d 176 (1993); but see Boswell v. Sherburne County, 849 F.2d 1117, 1121 (8th Cir. 1988) (recognizing split among circuits in the issue).

In contrast, the Fifth Circuit Court of Appeals has consistently adopted a more protective constitutional standard for pretrial detainees, as opposed to convicted prisoners. In Jones v. Diamond, 636 F.2d 1364 (5th Cir.) (en banc), cert. dismissed, 453 U.S. 950 (1981), for instance, the court held that, "[P]retrial detainees are en-

titled to reasonable medical care unless the failure to supply it is reasonably related to a legitimate government objections" Id. at 1378. See all Pfannstiel v. City of Marion, 918 F.2d 1178, 1186 (5th Cir. 1990) (same; quoting Jones standard). The Fifth Circuit most recently adopted this standard in Hare v. City of Corinth, 36 F.3d 412, 415 (5th Cir. 1994), reh. en banc granted, 36 F.3d 417 (5th Cir. 1994). (The en banc Hare court has yet to issue an opinion).

Moreover, this Court has in analogous circumstances extended its Fourth Amendment analysis to evaluate the constitutional claims of an accused citizen at a stage beyond the initial seizure. In Albright v. Oliver, __ U.S. __, 114 S.Ct. 807 (1994), a plurality of the Court rejected an arrestee's argument that substantive due process governs the claim that he was prosecuted

(not arrested) without probable cause. 114 S.Ct. at 810. Once aware of his outstanding arrest warrant, which was issued upon the filing of a criminal information, the arrestee in Albright voluntarily surrendered but was released after posting bond. Id. Although the State Court found probable cause at a preliminary hearing, the criminal charges were later dismissed before trial on the basis that the charges failed to state an offense under state law. Id. The arrestee then brought suit, claiming that his continuing prosecution without probable cause violated substantive due process. Id.

The Albright plurality held simply that the Fourth Amendment, not Fourteenth Amendment substantive due process, governed the claim. Id. at 811. "The Framers", according to the plurality, "considered the matter of pretrial deprivation of liberty,

and drafted the Fourth Amendment to address it." Id.

Two concurring opinions, one by a member of the plurality, are also pertinent. Justice Ginsburg's opinion, for instance, invoked the common law rule that an arrestee's seizure in considered to continue even after pretrial release from custody. Id. at 815 (Ginsburg, J., concurring). Whether released on bond or detained awaiting trial, an arrestee is equally bound to answer the State's charges at trial and is therefore "seized" in either case. Id. at 817. Concurring separately, Justice Souter reasoned that,

> The importance of recognizing that latter limitations [on the reach of substantive due process] is underscored by pragmatic concerns about subjecting government actions to two (potentially inconsistent) standards for the same conduct and needlessly imposing on trial courts the unenviable burden of reconciling well-established

> jurisprudence under the Fourth and Eighth Amendments with the ill-defined contours of some novel due process right.

Id. at 820 (Souter, J., concurring in the judgement).

In summary, five members of the Albright court endorse the conclusion that the Fourth Amendment provides the governing constitutional standard for assessing the pretrial claims of accused citizens. Albright, of course, assessed the probable cause, as opposed to reasonableness of seizure, component of the Fourth Amendnent. Yet, in so doing, the Court unequivocally rejected the contention that either the Eighth or Fourteenth Amendments govern a constitutional analysis of the post-arrest,

yet pre-conviction, stage of criminal proceedings.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari prayed for within should be granted.

Respectfully submitted,

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October 11, 1995

No. 95-_____

IN THE
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BONNIE C. SABIA, et al.,

Petitioners,

vs.

SEMINOLE COUNTY, FLORIDA, et al.,

Respondents,

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
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APPENDIX B

U. S. District Court, Middle District of Florida, Orlando Division, Order Granting Summary Judgment . .

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-2850
Non-Argument Calander

D.C. Docket No. 90-831-CIV-ORL-06

BONNIE C. SABIA, individually and as administratrix of the Estate of Edwin P. Bateman, and MARGARET CARROW, individually and as natural mother of Edwin P. Bateman,

Plaintiffs-Appellants,

versus

SEMINOLE COUNTY, MATTHEW MCGILL, in his official capacity as guard at the Seminole County Jail, DOUGLAS FAULS, in his official capacity as guard at the Seminole County Jail, JAY LEMEN, individually and in his official capacity as Jail Administrator, RICHARD BLOUNT, in his official capacity as guard at the Seminole County Jail, DONALD ESLINGER, individually and in his official capacity as successor to John E. Polk, Sheriff and Supervisor of the guards,

Defendants-Appellees,

IRMA BASS-PAUL, individually and in her capacity as psychologist for the Psychological Services, Seminole County Jail, et al.,

Defendants.

Appeal from the United States District Court for the Middle District of Florida

(July 14, 1995)

Before TJOFLAT, Chief Judge, KRAVITCH, Circuit Judge, and JOHNSON, Senior Circuit Judge.

PER CURIAM:

In August 1987, Edwin Bateman, a juvenile, committed suicide in the Seminole County Jail while awaiting trial for armed robbery and murder. Bonnie C. Sabia, individually and as administratrix of the estate of Edwin Bateman, and Margaret Carrow, individually and as natural mother of Edwin Bateman, (collectively, "Appellants") brought this action under 42 U.S.C.A. Section 1983 against various defendants. As a result of prior rulings, the only remaining defendants in this case are Matthew McGill, Richard Blount, Douglas Fauls, and

Donald Eslinger, in their official capacities, and Seminole County (collectively, "Appellees"). This appeal is from the district court's grant of summary judgement for Appellees in June 1994.

Appellants contend that summary judgement was inappropriate because (1) Appellees failed to sustain their burden of production in moving for summary judgement, (2) there is a genuine issue of fact as to whether the actions of the individual defendants constituted deliberate indifference in violation of Bateman's Fifth Amendment rights as a pretrial detainee, (3) the alleged constitutional violation stemmed from the policies of Seminole County, and (4) the grant of summary judgement violated the law of the case as established by the district

court's prior denial of summary judgement for Appellees. After reviewing the record, we conclude that Appellants' contentions are without merit.

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BONNIE SABIA, individually and as administratrix of the estate of Edwin P. Bateman, and MARGARET CARROW, individually and as natural mother of Edwin P. Bateman,

Plaintiffs,

vs. CASE NO. 90-831-CIV-ORL-06

SEMINOLE COUNTY, MATTHEW MCGILL, in his official capacity as guard at the Seminole County Jail, JAY LEMEN, in his official capacity as Jail Administrator, DOUGLAS FAULS, in his official capacity as guard at the Seminole County Jail, RICHARD BLOUNT, in his capacity as guard at the Seminole County Jail, DON ESLINGER, in his official capacity as successor to John E. Polk, Sheriff and Supervisor of the guards, and SEMINOLE COMMUNITY MENTAL HEALTH CENTER, INC., a Florida corporation, not-for-profit,

Defendants.
_____/

ORDER GRANTING SUMMARY JUDGEMENT

This case is before the Court upon the following motions for Summary Judgement by Defendants: Eslinger, McGill, Blount, Fauls and Lemen (Doc. No. 152,

filed April 7, 1994), and Seminole County (Doc. No. 157, filed April 19, 1994).1 Defendant Eslinger (as successor of Sheriff Polk) is the Sheriff of Seminole County. Defendant Lemen is the Administrator of the Seminole County Jail. Defendant McGill, Blount, and Fauls were guards at the Seminole County Jail at the time the incident at issue herein occurred.

A synopsis of the facts of this case is contained in the Order of the Eleventh Circuit Court of Appeals, No. 92-2774, filed December 20, 1993 (see Doc. No. 50, Exh. E). At approximately 2:00 a.m. on August 27, 1987, Edwin P. Bateman

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1 The Motion for Summary Judgement by Defendant Seminole Community Mental Health Center, Inc., (Doc. No. 163, filed April 22, 1994), is moot by virtue of this Court's Order granting Plaintiff's Motion to Voluntarily Dismiss this Defendant.

committed suicide by hanging.2 At the time of his death, the decedent was incarcerated in the Seminole County Jail, following his July 14, 1987, arrest for armed robbery and murder. Bateman was a 17-year-old juvenile and, as such, was visually observed every fifteen minutes.

Pursuant to a contract between the jail and the Seminole Community Mental Health Center, Inc., mental health professionals Gill Kaufman and Irma Bass-Paul were to provide a total of ten to twelve

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2 During oral argumentit was asserted without contradiction that, technically, Bateman's suicide was accomplished by strangulation rather than hanging, in that the bar to which the makeshift noose was tied was approximately three feet from the ground. As such, Bateman was never suspended in the air; rather, he died while in a sitting position on the floor of his cell. This could clarify why the correctional officers, who conducted the requisite visual observations from the control room, were not aware that Bateman had committed suicide until he had been dead for approximately four to six hours.

hours of mental health care to inmates at the jail. Bateman met separately with Bass-Paul and Kaufman on several occasions during his incarceration. On July 30, 1987, a guard placed Bateman on suicide watch. Bateman was returned to the general population after meeting with Kaufman, who determined that Bateman was not suicidal. Bateman met with Bass-Paul several times during the month of August, 1987. Bateman expressed some remaining depression, but did not appear suicidal. During his last session with Bass-Paul on August 25, 1987, Bateman said he "felt good."

Plaintiff Sabia, as Administratrix of Bateman's estate, and Margaret Carrow, as the natural mother of Bateman, brought this action under 42 U.S.C. Section 1983 against three separate groups of

Defendants: employees of the Seminole County's Sheriff's Office; the Mental Health Center and its employees, Bass-Paul and Kaufman; and Seminole County.

All Defendants filed motions for summary judgement, which were denied by the district court judge to whom this case was originally assigned. Defendants Jay Lemen and Sheriff Eslinger appealed this Court's denial of their motions for summary judgement on grounds of qualified immunity. All other Appellants asked the Court of Appeals to hear their appeals under the doctrine of pendent jurisdiction.

The Eleventh Circuit Court of Appeals partially reversed this Court's denial of summary judgement, finding that Lemen, the Seminole County Jail Administrator, was entitled to summary judgement in his

individual capacity on the basis of qualified immunity.3 "In the interest of judicial economy," the Court of Appeals extended pendent jurisdiction to Bass-Paul and Kaufman, holding that they were entitled to summary judgement on the merits because the record contained no evidence that the two defendants' treatment of Bateman was deliberately indifferent. The Court of Appeals declined to consider any other pendent issues.

On remand, this Court entered an Order consistent with the decision of the

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3 The Court of Appeals found: Lemen had no knowledge of any threat or attempt at suicide by Bateman. In addition, Bateman was checked every fifteen minutes as per regulations, and met regularly with a mental health professional. Given that as far as Lemen was aware, Bateman had neither threatened nor attempted suicide prior to taking his own life, the failure of Lemen to prevent his suicide cannot, as a matter of law, constitute deliberate indifference.

Court of Appeals. Subsequent to the entry of the Order, the Court granted Plaintiff's Motion for Voluntary Dismissal of Defendant Eslinger in his individual capacity (Doc. Nos. 143 and 146).

On the eve of the hearing on the Motions for Summary Judgement, Plaintiffs filed a Motion for Voluntary Dismissal, With Prejudice, of Defendant Seminole Community Mental Health Center (Doc. No. 176). This Court has granted that motion by separate order.

Oral argument on the renewed motions for summary judgement of the remaining Defendants was heard by the Court on June 1, 1994.

Motion for Summary Judgement by Defendants Eslinger, Lemen, McGill, Blount and Fauls

These Defendants move for summary judgement on the basis that there is no

evidence sufficient to raise a factual question as to whether any of the Defendants was guilty of deliberate indifference to a known serious danger or was deliberately indifferent in failing to prevent the Decedent's suicide.

In the recent en banc decision in Tittle v. Jefferson County, 10 F.3d 1535 (11th Cir. 1994), the personal representative of two inmates who hung themselves while incarcerated at the Jefferson County Jail brought an action against Jefferson County in which they alleged that the County violated the decedent's constitutional rights by failing to correct its defectively designed jail cells and to provide for sufficient screening of inmates for suicidal tendencies. In holding for the Defendant, the Court of Appeals noted that

> [i]n a prisoner suicide case, to prevail under section 1983 for violation of substantive rights, under either the eight or fourteenth amendment, the plaintiff must show that the jail official (defendant) displayed "deliberate indifference" to the prisoner's taking his his own life.

Id. at 1539 (quoting Edwards v. Gilbert, 867 F.2d 1271, 1274-75 (11th Cir. 1989 (citations omitted)). The Court explained that, in the context of a jail suicide case, the precise issue is "whether a defendant was deliberately indifferent to an individual's mental condition and the likely consequence of the condition". Id.

The plaintiff in a jail suicide case must meet a stringent standard to successfully establish "deliberate indifference." "[A] finding of deliberate indifference requires that officials have notice of the suicidal tendency of the individual whose rights are at issue in

order to be held liable for the suicide of that individual." Id. (emphasis in original) (citing Popham v. City of Talladega, 908 F.2d 1561, 1564 (11th Cir. 1990)). The burden is on the plaintiff to demonstrate a "'strong likelihood, rather than a mere possibility,' that suicide would result froma defendant's actions or inactions." Id. (emphasis added) (quoting Edwards, 867 F.2d at 1276). The fact that an inmate had an opportunity to commit suicide is insufficient, in and of itself, to impose liability on those charged with the care or prisoners. Id. (citing Popham).

Plaintiffs argue that they have established a genuine issue of material fact as to whether one or more of the Defendant correctional officers were put on notice that Bateman was suicidal before

he died.

The evidence is uncontroverted that mental health professionals were assigned to assess Bateman regularly and that these professionals did not consider Bateman to be a suicide risk. Nevertheless, assuming without deciding that these Defendants did have notice of Bateman's suicidal tendencies, the Court of Appeals found on page 7 of its decision that the record shows the decedent "was checked every fifteen minutes as per regulations" governing the incarceration of juveniles.4 On this record, the Court concludes that Plaintiff has failed to demonstrate the existence of

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4 The requirements governing those charged with custody of a juvenile were identical to those required in the case of a suicidal inmate -- i.e., visual observation at 15-minute intervals. Therefore, whether or not any of the Defendant correctional officers was on notice of Bateman's suicidal tendendcies, the officers were taking the same precautions.

a genuine issue of material fact as to whether Sheriff Eslinger, Jail Administrator Lemen or the Defendant correctional officers -- assuming without deciding that these Defendants were on notice of decedent's mental condition -- showed deliberate indifference to the consequences of the decendent's mental condition. Accordingly, summary judgement will be entered in favor of Defendants Eslinger, Lemen, McGill, Blount and Fauls.

Motion for Summary Judgement by Seminole County

Defendant Seminole County moves for summary judgement on the grounds that the record evidence demonstrates that Seminole County "was not the moving force behind any alleged deprivation of the Plaintiff's constitutional rights," see Monell v. New York City Dept. of Social Services, 436

U.S. 658, 694, 98 S.Ct. 2018, 2037, 56 L.Ed. 2d 611 (1978).

Plaintiffs argue that the affidavit of their expert witness, Patrick R. Anderson (Doc. No. 178, filed May 31, 1994), establishes a genuine issue of material fact as to the constitutional sufficiency of the County's custom and policy of checking on inmates considered to be at risk of suicide.

"Counties may be liable for violations of constitutional rights only when such violations occur as a result of an official county policy." Tittle,k 10 F.3d at 1540 (citing Monell v. Dep't of Social Services, 436 U.S. 658, 694, 98 S.Ct. 2018, 2037, 56 L.Ed 2d 611 (1978); Parker v. Williams, 862 F.2d 1471, 1477 (11th Cir. 1989).

Plaintiffs have not pointed to any evidence which shows the existence of a genuine issue of material fact as to whether the County acted with deliberate indifference with respect to the rights of the decedent. To the contrary, as noted above, the Court of Appeals found that "Bateman was checked every fifteen minutes as per regulations ...." On this record, summary judgement in favor of Seminole County is appropriate.

Conclusion

For the reasons expressed, the Court hereby **GRANTS** remaining Defendants' Motion for Summary Judgement (Doc. Nos. 152 and 157). The Clerk is hereby directed to enter summary judgement in favor of all remaining Defendants and against Plaintiffs.

DONE AND ORDERED in Chambers at Orlando, Florida this 7th day of June, 1994.

/S/
GEORGE C. YOUNG
SENIOR UNITED STATES
DISTRICT JUDGE

copies to:
Counsel of Record